

**Addendum and Amendments to the testimony of
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Evaluation submitted to the
Subcommittee on the Constitution and Civil Justice
Committee on the Judiciary
U.S. House of Representatives
Revised as of June 16, 2018**

“QUESTIONS REGARDING THE 2020 U.S. CENSUS”

Chairman King, Ranking Member Cohen, and members of the subcommittee.

Thank you for the opportunity to participate in the hearing on June 8. As you will recall I am a Professor of demography and sociology at Rice University in Houston, Texas. I previously served as Director of the U.S. Census Bureau under President George W. Bush and as State Demographer of Texas, having been appointed to that position by then Governor Rick Perry, a post I held until I entered Federal service with the Census Bureau.

In addition to the duties associated with the positions noted above I have worked with national and state-level groups involved in analyzing census data for redistricting of substate areas for use in the determination of U.S. House of Representative districts and in performing specialized substate analyses. For more than 40 years, I also have performed substantive analyses of how demographic and socioeconomic change impact the forms and types of development in rural and urban communities, by analyzing objective demographic and socioeconomic data from the Census Bureau.

As I noted in my testimony on June 8, 2018, I understand that the proposals you are discussing today are the subject both of legislation and litigation. I am submitting this addendum to my previous testimony because we did not fully examine the issues related to the collection and use of

their expenditures for health care, education, rural hospitals and infrastructure, road and highway construction and maintenance, public transit, and other services. Civic and business leaders also rely on accurate data from the census, and other datasets for which the census provides baseline data, to attract and retain vital business investments that create economic growth and job creation. As noted in my previous testimony, in addition to the uses noted above, businesses use census information to guide such decisions as where to locate plants and stores, what type of services to offer, and how best to meet the needs of their customers and employees. In fact, when I served as Texas State Demographer (before I served as Director of the Census Bureau), I received many requests for data that could be readily obtained, directly or indirectly, from the census to inform the work of state agencies as well as private-sector developments.

It is these many important uses of census data — by government and the private and nonprofit sectors — that could be harmed if the decennial census for communities and other geographic areas are not accurate. We must do all we can to ensure the accuracy of such data for current and future uses for governmental and other public and private sector applications.

Having worked with many of those in the Census Bureau involved in the analyses and evaluation of alternative means of collecting the census data used for redistricting, I have full confidence in their competence, integrity and their dedication to obtaining a complete count of the population of the United States in order to fulfill the major purpose of the decennial census and other related collection procedures. I recognize the delicate balance that must be achieved to ensure that all those residing in the United States are included in determining the demographic base used for the apportionment of House seats. Thus, despite the fact that data apparently have been successfully collected on citizenship status for some purposes, I am concerned about how the inclusion of questions that directly solicit information on citizenship and immigration (legal) status from every

Community Survey and earlier surveys have included a question on citizenship, data collection for all census areas have not included such a question since 1950. — a very different time in our Nation's history.

Unfortunately, the 2018 End-to-End Census Test (the equivalent of a dress rehearsal) was planned and started before Secretary Ross decided to add a citizenship or immigration status questions to the 2020 Census. There is evidence that even small changes in survey question order, wording, and instructions can have significant, and often unexpected, consequences for the rate, quality, and truthfulness of response. Because the End-to-End test was the final opportunity to evaluate the citizenship question in a field setting, the effect of adding this question to the 2020 Census on data quality and census accuracy is largely unknown. Since Congress must allocate taxpayer funds to pay for a census, I think it is worth considering that unexpected obstacles that arise as 2020 Census operations unfold will add to the costs, perhaps significantly, but without assurances that such efforts will yield significantly more accurate data.

The data used by the census include data necessary for redistricting and the administration of Federal programs. But, given time and other considerations, ensuring that such data can be accurately and efficiently collected may be difficult but particularly so if the procedures for collecting such data and ensuring its accuracy have not been adequately tested.

It is not my place to offer an opinion on whether the Nation should amend the Constitution to base congressional apportionment on a subset of "the whole number of persons in each state," or whether the census figures used for legislative redistricting should include only data on citizens or persons with legal immigration status. Those are decisions for both the legislative and judicial branches of our Federal government to debate. However, as I, and several other former census directors advised Secretary of Commerce Wilbur Ross, it is essential to ensure continuity in important



Testimony of

Arturo Vargas, Executive Director
National Association of Latino Elected and Appointed
Officials (NALEO) Educational Fund

to the
Subcommittee on the Constitution and Civil Justice
of the
House Judiciary Committee

for its hearing concerning
Questions Regarding the U.S. Census

June 8, 2018

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With the benefit of more than 200 years of experience, the Census Bureau has attained a wealth of expertise in obtaining more accurate data over time. The agency's technical aptitude is supported by its track record of improvement in accuracy, from an estimated net undercount of 5.4% of the population in 1940 to a net overcount of just .01% in 2010. While there is still a differential net undercount for certain population groups, including Latinos, the Bureau has made progress in reducing that undercount as well.

The Bureau follows time-tested, scientifically-validated procedures for refining its survey instruments and methodologies to achieve, and maintain, advances in data quality, which are set forth in numerous public-facing documents and submissions to sister agencies and to Congress. First, years in advance of implementation of any alterations, the Census Bureau regularly engages government entities in validating and suggesting changes to topics of inquiry, to ensure that members of the public are asked only for information necessary. For the 2020 Census, it most recently requested agencies' feedback on topics and questions in 2016. Second, the Bureau conducts extensive, advance research and testing of requested changes to determine how to structure questionnaires and related outreach to secure the most complete and accurate data possible. A Census Bureau fact sheet published in August 2017 indicates it typically takes at least five years of study for a suggestion to result in an adopted change to a questionnaire.

Unfortunately for our nation, the process leading to adoption of a citizenship question on the 2020 Census failed to meet the Census Bureau's procedural standards, and therefore risks causing a decline in the quality of Census data as well as an increase in the cost of the Census that our nation can ill afford. Moreover, any contemporary effort to add additional inquiries to the 2020 Census or to change core Constitutional mandates – as the lawsuit filed by Alabama on May 21, 2018 apparently seeks to do – violates best practices for decennial enumeration by virtue of being untimely, logistically infeasible and fundamentally inconsistent with our nation's guiding principles. Neither the citizenship question nor any unprecedented effort to determine residents' immigration status through the Census was proposed in the regular course of interagency coordination over the past decade; field-tested and researched at all, much less for the customary period of time; or contemplated as the Census Bureau developed logistical plans for 2020 and submitted topics to be covered on the 2020 Census to Congress in March 2017.

The reasons given by the Department of Justice and Department of Commerce for incorporating a citizenship question into the 2020 Census are flawed and specious. Officials stated that resulting data are needed for better enforcement of the Voting Rights Act (VRA); however, the requested data have never been available throughout the existence of the VRA, and plaintiffs have nonetheless prevailed hundreds of times over the past 53 years in defeating schemes that would have denied a vote to or diminished the value of the votes of underrepresented communities.

In addition, the Secretary of Commerce falsely claimed there is a lack of evidence that the citizenship question will depress response rates. Although the question has not been tested in the current political climate, in a form sent to 100% of the nation's households, both Census Bureau scientific experts and experienced enumerators have indicated in internal memos that they have observed increasing non-cooperation with enumeration, and expect that response rates may drop substantially in response to adoption of a citizenship question.

Statement for the Hearing Record

**United States House Judiciary Committee
Subcommittee on the Constitution and Civil Rights**

“Questions Regarding the U.S. Census”

June 15, 2018

Chairman King, Ranking Member Cohen, and members of the Subcommittee, on behalf of OCA – Asian Pacific American Advocates and our fifty local chapters around the country, we thank you for the opportunity to submit this statement for inclusion in the hearing’s record.

The U.S. Constitution requires a census every 10 years for the purpose of apportioning seats in the U.S. House of Representatives (Article I, sec. 2, clause 3) among the 50 states as well as for the allocation of over \$800 billion of federal funding every year.¹ The Census is necessary for us to understand the changing demographics of America. The U.S. Census Bureau must balance the information needs of a growing, changing nation with respect for the privacy of the American public. Secretary of Commerce Wilbur Ross’s decision to include a “Citizenship Question” risks the legitimacy and accuracy of the fast approaching decennial 2020 Census.

The Constitution is clear that every person must be counted. Every Census since the first enumeration in 1790 has included both citizens and non-citizens. A citizenship question has not been included on the Census since 1950. Prior to the removal of the citizenship question and the Civil Rights Act of 1964, Census data was improperly used against American citizens. The U.S. government used the Census data to wrongly imprison over 120,000 Japanese American citizens in internment camps.²

ASIAN AMERICANS AND PACIFIC ISLANDERS HAVE HISTORICALLY BEEN UNDERCOUNTED

As a national organization that serves to best represent the interests of its chapters and the local communities that our chapters serve, it is of utmost importance to OCA that our Asian American and Pacific Islander (AAPI) community is accurately counted with every Census. The AAPI community is the fastest growing population in the country. According to Census facts as of 2015, there is a total of 22.5 million of Asian Americans and Pacific Islanders that reside in

¹ Lowenthal, T. (2018). *Factsheet: Citizenship and Legal Status Questions on the 2020 Census | Preventing a Decennial Disaster*. The Leadership Conference Education Fund. <http://civilrightsdocs.info/pdf/census/2020/Factsheet-2020citizenshiplegalstatusquestion.pdf>

² Anderson, M. & Seltzer, W. (2007). *Census Confidentiality under the Second Wars Power Act (1942-1947)*. From <http://studylib.net/doc/7742798/census-confidentiality-under-the-second-war-powers>

THE QUESTION IS UNTESTED AND INACCURATE

The citizenship question is untested and will likely result in an inaccurate count for the 2020 Census. Adding a question or making a change to the Census involves extensive testing, review, and evaluation over a 5-year period. This ensures that the change is necessary and will produce quality, useful information for the nation.⁹ The requesting agency must show that its mission would be compromised if the question were not added or changed, and Secretary Ross has provided no reason for the necessity of a citizenship question besides to provide complete and accurate data in response to the Department of Justice's request.

The Census Bureau requires that questions in the Census are tested to gauge wording and accuracy. In addition, the Census Bureau must also evaluate question performance in field tests. However, the Census Bureau has only able to conduct one of the three planned test in 2018. After the 5-year process, the Census Bureau then reviews research results and decides whether to recommend implementation of the new or changed survey question. However, this process was absent for the citizenship question. Past directors of the Census Bureau have stated that a citizenship question would undermine the count.¹⁰

Any inaccuracies in the 2020 Census will have long-lasting and wide-ranging consequences because it would carry over into other surveys performed by the Census Bureau, including the American Population Survey, and the National Health Interview Survey. We also reiterate the untested nature of the citizenship question and that its inclusion not only affects an accurate count of U.S. residents but also the allocation of funding for multiple agencies and federal and state programs.

CONCLUSION

The citizenship question will have countless negative impacts on the work of the Census Bureau, communities of color, and undercounted communities. It not only disincentives immigrant communities from filling out the form but will also lead to an undercount of these communities. Additionally, the question is untested and has not been researched using the usual vigor that the Census Bureau is known for. We reiterate the necessary removal of the question in order to ensure that our country and its residents are accurately counted.

⁹ U.S. Census Bureau. (2017). How a Question Becomes Part of the American Community Survey. From <https://www.census.gov/content/dam/Census/library/visualizations/2017/comm/acs-questions.pdf>

¹⁰ Capps, K. (2018). Ex-Census Director: Citizenship Question Is 'a Tremendous Risk'. From <https://www.citylab.com/equity/2018/02/former-census-director-citizenship-question-is-a-tremendous-risk/554372/>

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June 13, 2018

The Honorable Steve King
Chair, Subcommittee on the Constitution and Civil Justice
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Cohen
Ranking Member, Subcommittee on the Constitution and Civil Justice
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

RE: Questions Regarding the U.S. Census

Dear Chairman King and Ranking Member Cohen,

We write to provide the views of the Anti-Defamation League ("ADL") for the House Judiciary Subcommittee on Constitution and Civil Justice hearings on "Questions Regarding the U.S. Census" held on June 8th, 2018. We would ask that this statement be included as part of the official hearings record.

ADL is a leading civil rights organization that has been working to secure justice and fair treatment for all since its founding in 1913. In seeking to protect civil rights for all, ADL advocates for fair and humane immigration policy, voting rights, implementation of our nation's civil rights laws, and equal rights for all. An accurate census count is at the very root of ensuring basic notions of equality and democratic representation and therefore, strikes at the core of ADL's mission.

As this subcommittee considers questions regarding the U.S. Census, we urge you to recall the longstanding mission and purpose of the decennial census. The founders of our nation chose population as the basis for sharing political power - not wealth or land. The decennial census, required by the U.S. Constitution, provides for that population count, and indeed requires a count of all persons living in the United States, regardless of citizenship or immigration status. This count is necessary in order fairly to apportion the number of U.S. House of Representatives among the states, to determine the number of Electoral College voters each state has, and to draw congressional, state legislative, and even city council district lines. The population figures obtained by over 600,000 door-to-door counters also affects the distribution of funding for infrastructure and community services. The longstanding mission and responsibility of the census is "to serve as the leading source of quality data about the nation's people and the economy." It lies at the core of America's most basic civic principle: the right of the people to elect their representatives.

Current efforts to disrupt the decade- long planning process of the 2020 Census, including the decision by the Trump administration to insert a citizenship question, threaten the ability of the Census Bureau to carry out this mission. The inclusion of a citizenship question will likely prompt false or incomplete answers, severely undermining the accuracy of the data in every community and every state. It will also chill participation of immigrant communities who may choose not to respond at all out of fear that the census information would be used for immigration enforcement purposes.

ADL Community Support Center

Anti-Defamation League, 605 Third Avenue, New York, NY 10158-3560 T 212.885.7700 www.adl.org

February 12, 2018

The Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Ross,

We, the undersigned Attorneys General of New York, Massachusetts, California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Mississippi, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington, as well as the Governor of Colorado, write to oppose the recent request by the Department of Justice to add a question on citizenship to the questionnaire for the 2020 decennial Census.¹ Adding a citizenship question – especially at such a late date in the 2020 Census planning process – would significantly depress participation, causing a population undercount that would disproportionately harm states and cities with large immigrant communities. This undercount would frustrate the Census Bureau’s obligation under the Constitution to determine “the whole number of persons in each state,”² threaten our states’ fair representation in Congress, dilute our states’ role in the Electoral College, and deprive our states of their fair share of hundreds of billions of dollars in federal funds that are allocated in part on decennial Census data. Indeed, as the Census Bureau has itself previously explained, “any effort to ascertain citizenship” in the decennial Census “will inevitably jeopardize the overall accuracy of the population count.”³

These tremendous harms are not justified by the Justice Department’s purported interest in strengthening enforcement of Section 2 of the Voting Rights Act. To the contrary, requesting citizenship data would undermine the purposes of the Voting Rights Act and weaken voting rights enforcement across the board.

For these reasons, we have serious concerns that adding a citizenship question to the 2020 Census at this late date would violate the Census Bureau’s obligations under the Constitution, the Administrative Procedure Act, and other federal statutes.

¹ See Letter from Arthur E. Gary, General Counsel, Justice Management Division, U.S. Dep’t of Justice, to Ron Jarmin, Performing the Non-Exclusive Functions and Duties of the Director, U.S. Bureau of the Census, U.S. Dep’t of Commerce (Dec. 12, 2017), <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html> [hereinafter DOJ Letter]. The Justice Department’s request that the Bureau “reinstate” a citizenship question on the Census, *see id.* at 1, is misleading, as no citizenship question has been included on the decennial census since 1950. From 1970 to 2000, a citizenship question was included only on the “long form” questionnaire, which was distributed to a sample of about one in six households in lieu of the decennial census questionnaire. Following the 2000 Census, the Census Bureau discontinued the “long form” questionnaire and replaced it with the American Community Survey, which is now sent to about one in every 38 households each year.

² U.S. Const. amend. XIV, § 2; *see also id.* art. I, § 2, cl. 3.

³ *Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980).

when asked questions about citizenship.¹⁰ Citing fears related to the current discourse on immigration policy, respondents have also refused to respond to questions and have ended interactions with surveyors.¹¹ The Census Bureau has recognized that these anxieties might present a barrier to participation in the 2020 Census, and may diminish overall data quality.¹² Even before the Department of Justice made its request, Census Bureau officials reported that early test surveys showed “an unprecedented groundswell in confidentiality and data-sharing concerns among immigrants or those who live with immigrants” related to the 2020 count.¹³ The Bureau already acknowledges that questions about citizenship in *any* federal statistical survey are sensitive and must be treated with care¹⁴; adding a citizenship inquiry to the mandatory decennial Census would undoubtedly exacerbate these problems, leading to larger undercounts and less reliable data.

Indeed, in a brief filed with the Supreme Court less than three years ago, four former Directors of the Census Bureau – appointed by Presidents of both political parties – explained based on their experience that “a one-by-one citizenship inquiry would invariably lead to a lower response rate to the Census in general,” and would “seriously frustrate the Census Bureau’s ability to conduct the only count the Constitution expressly requires: determining the whole number of persons in each state in order to apportion House seats among the states.”¹⁵ The former Directors explained that “[r]ecent experience demonstrates lowered participation in the Census and increased suspicion of government collection of information in general. Particular anxiety exists among non-citizens. There would be little incentive for non-citizens to offer to the government their actual status; the result [of inquiring about citizenship status] would be a reduced rate of response overall and an increase in inaccurate responses.”¹⁶

¹⁰ Memorandum from the U.S. Census Bureau, Ctr. for Survey Measurement, to Assoc. Directorate for Research and Methodology, 1, 5-7 (Sept. 20, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

¹¹ *Id.* at 2.

¹² U.S. Census Bureau, Nat’l Advisory Comm. on Racial, Ethnic, and Other Populations, *Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for 2020 Census*, 2, 12-13, 15 (Nov. 2, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf>.

¹³ Mica Rosenberg, *U.S. Officials Worry Immigrant Fears Could Make Census Inaccurate*, Reuters (Nov. 30, 2017, 3:10 PM), <https://www.reuters.com/article/us-usa-immigration-census/u-s-officials-worry-immigrant-fears-could-make-census-inaccurate-idUSKBN1DU2U7>. These concerns from some federal officials are shared by state-level experts with experience coordinating the administration of the decennial Census in their states. Massachusetts Secretary of the Commonwealth, William Galvin, for example, recently testified before a state legislative committee that a citizenship inquiry would be a clear deterrent to participating in the 2020 Census. *See* Christina Prignano, *Mass. secretary of state warns Trump could “sabotage” 2020 Census*, Boston Globe (Feb. 6, 2018), <https://www.bostonglobe.com/metro/2018/02/06/mass-secretary-state-warns-trump-could-sabotage-census/HH2b73v0o2dkddzrjYDyUK/story.html>.

¹⁴ U.S. Census Bureau, Data Stewardship Exec. Policy Comm., *DS-16: Policy on Respondent Identification and Sensitive Topics in Dependent Interviewing*, 1-2 (Dec. 9, 2014), https://www2.census.gov/foia/ds_policies/ds016.pdf.

¹⁵ Brief of Former Directors of the U.S. Census Bureau as Amici Curiae Supporting Appellees at 25, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (No. 14-940).

¹⁶ *Id.* at 5.

of the survey components or by having successfully fielded the survey components on a previous occasion.”²⁴ OMB specifically recommends pretesting new components of a survey prior to a field test, and incorporating results into the final design.

In addition, the Census Bureau has further clarified the statistical standards it must utilize to address the agency’s unique methodological and operational challenges.²⁵ These standards require that all data collection instruments be tested “in a manner that balances data quality and respondent burden,” and specifically require pretesting to ensure questions are not “unduly sensitive” and “do not cause undue burden.”²⁶

These requirements cannot reliably be met in the limited time available before the Census Bureau’s March 31 deadline. The Census Bureau already developed and approved its National Content Test in 2015, which it characterized as its “primary mid-decade opportunity to compare different versions of questions prior to making final decisions for the 2020 Census.”²⁷ And the 2018 End-to-End Census Test – which the Census Bureau describes as the “culmination” of its years-long process of testing and validating all aspects of the decennial Census design – is already underway, having begun in August 2017.²⁸ In short, there is insufficient time for the Census Bureau to conduct the extensive development and testing that would be required to comply with OMB guidelines for adding new questions to the 2020 Census while assuring its validity and accuracy. And as the Census Bureau has explained, conducting the Census with “untested and unproven procedures” would further undermine the Bureau’s ability to conduct “a timely, accurate” enumeration.²⁹

These concerns are heightened even further by the Census Bureau’s already-precarious fiscal position as it prepares for the 2020 Census. The Bureau is dramatically underfunded, and the addition of a citizenship question would add significantly to the overall price of completing the Census. The Bureau’s appropriated budget for Fiscal Year 2017 was roughly ten percent below its request, and was finalized seven months late.³⁰ And the administration’s initial budget request for Fiscal Year 2018 proposed only a two percent increase for the Census Bureau over the previous year – well short of the resources needed for the Bureau to prepare adequately for

²⁴ Office of Mgmt. & Budget, *Statistical Policy Directive No. 2*, § 1.4 at 9 (2006).

²⁵ See U.S. Census Bureau, *Statistical Quality Standards*, ii (Jul. 2013), https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/quality/statistical-quality-standards/Quality_Standards.pdf.

²⁶ *Id.* at 7-8 reqs. A2-3 & A2-3.3.

²⁷ U.S. Census Bureau, *Information Collection Request: 2015 National Content Test*, 80 Fed. Reg. 29,609, 29,610 (May 22, 2015).

²⁸ U.S. Census Bureau, *Frequently Asked Questions for the 2018 End-to-End Census Test* (Dec. 20, 2017), <https://www.census.gov/programs-surveys/decennial-census/2018-census-test/faqs.html>.

²⁹ *Census Counts*, at 49-50.

³⁰ Robert Shapiro, *The 2020 Census May Be Wildly Inaccurate – And It Matters More Than You Think*, BROOKINGS (Aug. 31, 2017), <https://www.brookings.edu/blog/fixgov/2017/08/31/the-2020-census-may-be-wildly-inaccurate-and-it-matters-more-than-you-think/>.

way to undo the harm the states would suffer from a ten-year deprivation of their constitutional allotment of Representatives.

In addition, a Census undercount could affect state representation in the Electoral College. The Constitution assigns each state a number of electors equal to “the whole number of Senators and Representatives to which the State may be entitled in the Congress.”³⁸ An undercount that affected the apportionment of Representatives would also misrepresent the number of electors each state should receive, thereby miscalculating each state’s proper role in selecting the President and Vice President.

This extraordinary harm to the fabric of our federal system would come with equally significant financial harm. Data derived from the decennial Census guide the geographic distribution of hundreds of billions of dollars in federal grant funds to states and local areas. According to one estimate, there are about 300 Census-guided federal grant programs, with total appropriations in Fiscal Year 2015 of approximately \$700 billion.³⁹ These programs include Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Title I grants to local educational agencies under the Elementary and Secondary Education Act, formula grants for highway planning and construction, Section 8 housing choice vouchers, the Low-Income Home Energy Assistance Program, and more.⁴⁰ In other words, a Census undercount would jeopardize critical federal funding the states need to provide health insurance, public education funding, food assistance, housing opportunities, energy assistance, and other services and support for millions of residents, regardless of citizenship status. Such widespread underfunding harms everyone, starting with the most vulnerable, including low-income communities and children.

The Census Bureau has both constitutional and statutory obligations to conduct an “actual enumeration.” Including a question on the 2020 Census that would manipulate the count by scaring people away from being counted – causing grave harm to the states and our residents – is inconsistent with those obligations.⁴¹

II. Adding a citizenship question to the 2020 Census would hamper the goals of the Voting Rights Act. The Justice Department’s request for citizenship data asserts that this information is necessary to ensure compliance with Section 2 of the Voting Rights Act. In fact, voting rights compliance will be undermined – not enhanced – by the addition of a citizenship question to the 2020 Census. Because the Justice Department’s request is unsupported by its

³⁸ U.S. Const. art. II, § 2, cl. 2; *see also id.* amend. XII, amend. XXIII (allocating electors to the District of Columbia).

³⁹ *See* Andrew Reamer, *Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds*, G.W. Inst. Pub. Pol’y (Aug. 22, 2017), <https://gwipp.gwu.edu/counting-dollars-role-decennial-census-geographic-distribution-federal-funds>.

⁴⁰ *See id.*

⁴¹ *Cf. Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 348 (1999) (Scalia, J., concurring) (noting that the purpose of a “genuine enumeration” is to accomplish “the most accurate way of determining population with minimal possibility of partisan manipulation”).

“voting-age population.”⁴⁸ The question of the appropriate population measure in Section 2 vote-dilution cases is, at best, unsettled.⁴⁹

In addition, even if citizen voting-age population were required in all cases, adding a citizenship question to the Census would not give the Justice Department the “reliable calculation” of citizenship information it claims to need. The Census is of course only administered every ten years,⁵⁰ so any CVAP figures from the decennial Census would quickly become outdated and less reliable over the course of the subsequent decade as a result of population shifts. And a citizenship question would not provide information sufficient to ascertain the precise number of eligible voters in a district because district residents might be ineligible to vote for other reasons, such as prior felony convictions.

In any event, the Census Bureau’s American Community Survey already collects citizenship data, and these estimates are available for the federal government to use as needed.

Indeed, Congress could not possibly have intended for effective Section 2 enforcement to depend on the availability of person-by-person citizenship data, because such data has never been available at any point since Section 2 has existed: not in 1965 when the Voting Rights Act was first enacted; not in 1982 when the Act was amended to clarify the vote-dilution standard; not in 1986 when the Supreme Court articulated the vote-dilution test in *Thornburg v. Gingles*. Because the Justice Department’s request seeks data that has never before been required in Section 2 litigation – and that cannot reliably be collected in any event – it cannot credibly serve as the basis for major changes to the 2020 Census design that will undercut the accuracy of the constitutionally mandated enumeration.

III. The addition of a question regarding citizenship to the 2020 Census is inconsistent with the Census Bureau’s Information Quality Guidelines. The Information Quality Act (“IQA”) requires agencies to ensure that the information they disseminate to the public is accurate, reliable, and objective.⁵¹ Consistent with this directive, the IQA requires OMB and other federal agencies to issue guidelines “ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency.”⁵² Recognizing the critical importance of the information it disseminates, the

⁴⁸ *Bartlett v. Strickland*, 556 U.S. 1, 12 (2009) (“This case turns on whether the first *Gingles* requirement can be satisfied when the minority group makes up less than 50 percent of the voting-age population in the potential election district.”); *see also id.* at 18 (“Unlike any of the standards proposed to allow crossover-district claims, the majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area? That rule provides straightforward guidance to courts and to those officials charged with drawing district lines to comply with § 2.”).

⁴⁹ *See, e.g., Sanchez v. State of Colo.*, 97 F.3d 1303, 1311 (10th Cir. 1996) (“Because *Gingles* advances a functional evaluation of whether the minority population is large enough to form a district in the first instance, the Circuits have been flexible in assessing the showing made for this precondition.”).

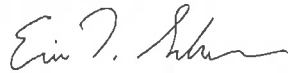
⁵⁰ U.S. Const. art. I, § 2, cl. 3; 13 U.S.C. § 141(a).

⁵¹ Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763 (Dec. 21, 2000).

⁵² *Id.*; *see also* Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8457 (Feb. 22, 2002).

IV. Conclusion. Fair, proportionate electoral representation in our democracy depends on valid Census data. The proposal to add a citizenship question to the 2020 Census questionnaire would defeat that goal, violate the Constitution, and undermine the purposes of the Voting Rights Act that the Justice Department claims it wants to protect. Because inclusion of a citizenship question would threaten the Census Bureau's ability to conduct its constitutionally-mandated role, and would be arbitrary and capricious under the Administrative Procedure Act – causing significant, direct harm to our states and residents – we urge you to reject the Justice Department's request.

Sincerely,



ERIC T. SCHNEIDERMAN
Attorney General of the State of New York



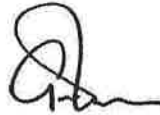
MAURA HEALEY
Attorney General for the Commonwealth of Massachusetts



XAVIER BECERRA
Attorney General of the State of California



JOHN W. HICKENLOOPER
Governor of the State of Colorado



GEORGE JEPSEN
Attorney General of the State of Connecticut



MATTHEW DENN
Attorney General of the State of Delaware



KARL A. RACINE
Attorney General for the District of Columbia



RUSSELL SUZUKI
Acting Attorney General of the State of Hawaii



LISA MADIGAN
Attorney General of the State of Illinois

/s Thomas Miller

THOMAS J. MILLER
Attorney General of the State of Iowa



JANET T. MILLS
Attorney General of the State of Maine



June 7, 2018

To The US House Judiciary Subcommittee on the Constitution and Civil Justice:

New York Counts 2020 is a broad-based, statewide coalition composed of racial justice, ethnic, immigrant, religious, health, education, labor, housing, social services, and business groups working in partnership with state and local government officials. Our aim is to ensure that the 2020 Census produces an accurate and complete enumeration of the State's population. In New York, one out of every four persons is an immigrant; making changes in the Census related to immigration status and citizenship is of great concern to us. As you are well aware, a full count of all residents is vital to ensuring that all New Yorkers receive equitable representation and resources, and is critical to a myriad of decisions made by local government and businesses.

The Constitution specifically requires the Census Bureau to take count of every living person in the country. The Supreme Court has addressed questions of representational eligibility in a number of cases, among them *Evenwel v. Abbott*, *Wesberry v. Sanders*, and *Reynolds v. Sims*; which hold that "representatives serve all residents, not just those eligible to vote;" and that "total population" ought to be the basis of representational equality in the House of Representatives.

Given our constitutional and civic duties to protect *all* residents' access to basic survival needs and political representation, and the grave importance of an accurate count to the basic functioning of local government, business, and research, we urge you to reject any proposals that would seek to hamper or discourage immigrant participation in the 2020 Census.

We strenuously object to Rep. Mo Brooks' (R-AL) attempt to exclude undocumented immigrants from the Census count. Given constitutional precedent, Rep. Brooks' main argument in favor of exclusion is legally unsupported. Brooks' preposterous argument is that the Census Bureau's mission to count all people living in the United States is outdated because the drafters of the Constitution never intended non-citizens to be included in the Fourteenth Amendment's contemplation of representation in terms of "persons." Yet the Supreme Court has several times taken up this question since the drafting of the Constitution, and has ruled that political representation must be blind to citizenship status.



**STATEMENT OF
VANITA GUPTA, PRESIDENT & CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**HOUSE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE
“QUESTIONS REGARDING THE U.S. CENSUS”**

June 8, 2018

Chairman King, Ranking Member Cohen, and Members of the Subcommittee: I am Vanita Gupta, president and CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to submit this statement for the record in this important hearing.

The Leadership Conference is a coalition charged by its diverse membership of more than 210 national organizations to promote and protect the civil and human rights of all persons in the United States. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education. The Leadership Conference provides a powerful unified voice for the many constituencies of the coalition: persons of color, women, children, individuals with disabilities, LGBTQ individuals, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations.

Given the breadth of our coalition, The Leadership Conference is ideally positioned to address many of the most pressing issues affecting the successful implementation of Census Bureau programs, surveys, and initiatives. We and the Leadership Conference Census Task Force co-chairs, NALEO Educational Fund and Asian Americans Advancing Justice-AAJC, have a long record of first-hand experience working in support of previous censuses. For the 2010 Census, we undertook the most comprehensive and extensive effort by a stakeholder organization to promote participation in historically hard-to-count communities and to mobilize local advocates in support of the census by highlighting the community benefits, civil rights implications, and constitutional imperative of an accurate count. We are now building upon our previous work to help ensure that no one is left out of the 2020 Census.

Ensuring a Fair and Accurate Census

The Leadership Conference views a fair and accurate 2020 Census as one of the most important civil rights issues of our day. Not only is the constitutionally mandated census central to apportioning political power at every level of our representative form of government, but the data collected influence the allocation of more than \$800 billion in federal funds every year, along with countless policy and investment decisions by government agencies, nonprofit organizations, and private enterprise.

if the Census Bureau uses a count of the entire population. Marshall's claim that a full population count violates the 14th Amendment is flatly wrong and contrary to the clear historical record.

Also on the witness list is J. Christian Adams. Adams has an extensive background in voter suppression and has supported aggressive mass voter registration purges that go beyond what is required by law. Adams was on the sham commission on election integrity that was led by Kansas Secretary of State Kris Kobach and Vice President Pence and which was ultimately disbanded by President Trump on January 3, 2018. According to newspaper reports, Kobach said he encouraged Trump to add a citizenship question to the census.

Another witness, Steven Camarota, is director of research for the Center for Immigration Studies, a group with a documented hostility to immigration. While arguing against bipartisan comprehensive immigration reform legislation in 2013, Camarota acknowledged that the "resident population" for apportionment includes all immigrants, citizen and noncitizen and undocumented. But Camarota asserted that "Congress may have the authority to change who is included in the apportionment population, but has so far has not done so." His citation for the claim notes that an allied organization, the Federation for American Immigration Reform, sued to block the Census Bureau from counting undocumented immigrants in the 1980 Census. Because that suit was dismissed by the U.S. Supreme Court on grounds of standing, Camarota concluded, "the constitutionality of excluding illegal immigrants from the apportionment has yet to be decided by a court of law."

In fact, the Constitution and laws are clear: every person counts. Equally clear is that the impact of actions that interfere with a fair and accurate 2020 Census will fall disproportionately on already vulnerable communities, denying them of fair representation and vital community resources. Communities of color, urban and rural low-income households, immigrants, and young children are all at risk of being undercounted relative to the rest of the population. The insertion of untested questions about citizenship and immigration status threaten to exacerbate those undercounts; the insertion of such questions with the explicit or unstated goal of using the results to distort congressional reapportionment is a threat to the basic structure of our representative form of government.

Conclusion

The Leadership Conference and its member organizations look forward to working with all members of this committee to ensure a cost-effective, secure, and above all, accurate and inclusive census in every one of the nation's communities.



Statement Of
Asian Americans Advancing Justice – AAJC
Hearing On
“Questions Regarding the U.S. Census”
House of Representatives
Judiciary Committee
Subcommittee on the Constitution and Civil Justice
June 8, 2018

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) submits this written testimony to the House of Representative’s Judiciary Committee’s Subcommittee on Constitution and Civil Justice in connection with its June 8, 2018 hearing titled, “Questions Regarding the U.S. Census.” Advancing Justice – AAJC, a national nonprofit, non-partisan organization founded in 1991 with a mission to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all, considers the census to be the backbone of its mission. With the next decennial census less than two years away, Advancing Justice – AAJC is alarmed at efforts that subvert the Constitution, derail the 2020 Census and ultimately result in an unfair and inaccurate count – one that does not count all communities equally. The Constitution is clear that all residents are to be counted through the decennial census, with no restrictions based on citizenship or immigration status.

Recognizing the importance of census data for the health of our society and democracy, Advancing Justice | AAJC maintains a permanent census program that monitors census policy, educates policy makers, and conducts community outreach and education to encourage participation in the surveys conducted by the Census Bureau, including for Census 2000 and Census 2010. Advancing Justice | AAJC has also served as a member of numerous advisory committees to the Census Bureau since 2000, including currently, the National Advisory Committee on Racial, Ethnic and Other Populations. Additionally, Advancing Justice | AAJC co-chairs the Leadership Conference on Civil and Human Rights’ Census Task Force.

Census data are critical for a functioning society as it allows for the distribution of over \$800 billion federal funds annually to states,¹ informs effective and efficient policy and planning decisions and is used to reapportion political representation and to redistrict at all levels. Without an accurate count of Asian Americans, these decisions will not address the needs of growing Asian American communities.

¹ Andrew Reamer, Geo. Wash. Univ. Inst. of Pub. Policy, COUNTING FOR DOLLARS 2020 The Role of the Decennial Census in the Geographic Distribution of Federal Funds Report #2: Estimating Fiscal Costs of a Census Undercount to States (2018), https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/GWIPP_Reamer_Fiscal_Impacts_of_Census_Undercount_on_FMAP-based_Programs_03-19-18.pdf.

CONSTITUTIONAL AND SUPREME COURT DECISIONS REQUIRE A COUNTING OF ALL PERSONS

Efforts to exclude the undocumented population from the decennial census count flies in the face of the U. S. Constitution. Article I, sec. 2, clause 3 of the Constitution requires a count every 10 years (decennial census) of all persons living in the country for the purpose of apportioning seats in the U.S. House of Representatives among the states. The Constitution explicitly requires an “actual Enumeration” of “all persons,” imposing on the federal government the duty to count the “whole number of persons in each State.”¹² Both Republican and Democratic administrations, through the U.S. Department of Justice (DOJ), have confirmed unequivocally that the Constitution requires a count of all persons living in the United States on Census Day, *regardless of citizenship status*.¹³

Moreover, in adopting the 14th Amendment, Congress rejected proposals to allocate seats in the House of Representatives based on voter-eligible population alone, rather than total population.¹⁴ Supreme Court rulings affirming the 14th Amendment’s guarantee of equal representation require that congressional districts have equal numbers of people.¹⁵ Furthermore, in *Evenwel v. Abbott*, the Supreme Court unequivocally stated that “the Fourteenth Amendment calls for the apportionment of congressional districts based on total population.”¹⁶ In doing so, the Court quoted from both James Madison and Alexander Hamilton in establishing that Congressional representation be “founded on the aggregate number of inhabitants.”¹⁷ This principle was confirmed and restated during debates related to the passage of the Fourteenth Amendment. During those debates, some members of Congress fiercely advocated for a “legal voter” basis for Congressional apportionment. That view was rejected in the Fourteenth Amendment, which retained the “whole population” basis of apportionment. Thus, in affirming total population as the basis for Congressional apportionment, it follows that the decennial census count must, in fact, count the entire population, including undocumented persons.

ADDITION OF AN UNTESTED CITIZENSHIP QUESTION CREATES FEAR AND WILL LEAD TO UNRELIABLE RESULTS (AS WOULD EFFORTS TO DOCUMENT THE UNDOCUMENTED)

The decision by Secretary of Commerce Wilbur Ross on March 26, 2018 for the Census Bureau to add an untested and unnecessary question on citizenship status to the 2020 Census form will lead to unreliable data. This decision is disrupting preparations at a pivotal point in the decade, undermining years of research and testing. The citizenship question has not appeared on the decennial census since 1950, and no testing has been done to determine its effect on the accuracy of Census 2020.

¹² 2 U.S.C. § 2a. *See also*, *Evenwel v. Abbott*, 136 S. Ct. 1120, 1127 (2016).

¹³ *See* Letter from Carol T. Crawford, Assistant Att’y Gen., to Jeff Bingaman, Chairman, Subcomm. on Gov’t Info. & Regul’n (Sept. 22, 1989) (on file with U.S. Dep’t of Justice).

¹⁴ *Evenwel*, 136 S. Ct. at 1127-28.

¹⁵ *See Wesberry v. Sanders*, 376 U. S. 1, 7–8 (1964), *Reynolds v. Sims*, 377 U. S. 533, 568 (1964).

¹⁶ *Evenwel*, 136 S. Ct. at 1129.

¹⁷ *Id.* at 1127.

Americans are significantly immigrant, with over two-thirds of the population being foreign-born (*See Table below*). More than a quarter of Asian Americans are not citizens. One quarter of Asian American immigrants arrived in the last seven years, which means that they have never participated in a decennial census. Furthermore, different Asian American subgroups are more immigrant than others, with those communities being even more susceptible to being missed due to concerns about the addition of the untested citizenship question.

Table: Asian American Immigrants²⁵

	Total population	Foreign-born	Not a Citizen	Percentage of Immigrants who are Recent Immigrants²⁶
Asian American	17,556,935	66.2%	27.7%	24.6%
Asian Indian	3,813,407	71.3%	37.1%	32.9%
Bangladeshi	175,592	74.7%	34.8%	37.5%
Burmese	153,262	82.5%	59.3%	51.8%
Cambodian	259,554	54.2%	13.3%	10.5%
Chinese	4,214,856	69.3%	30.6%	27.1%
Filipino	2,811,885	65.1%	19.5%	16.1%
Hmong	278,871	36.2%	8.0%	7.4%
Indonesian	76,516	73.6%	45.0%	19.4%
Japanese	789,830	41.7%	28.3%	30.8%
Korean	1,438,915	71.6%	27.3%	14.9%
Laotian	205,131	56.8%	12.8%	7.0%
Nepalese	155,573	85.2%	65.0%	56.2%
Pakistani	460,515	66.3%	25.3%	26.5%
Thai	202,744	76.9%	33.1%	23.5%
Vietnamese	1,803,575	67.4%	16.3%	15.8%

Source: S0201: Selected Population Profile In The United States, 2016 American Community Survey 1-Year Estimates

Any effort to add an immigration status question, particularly at this late date and with no testing, would only further serve to ensure unreliable data. The harm that will flow from the addition of a citizenship question will be exacerbated by the current political climate and the public's perception of the government and where its priorities lie. Immigrant communities already have been shown to fear the census.²⁷ In fact, we have seen reports of immigrants

²⁵ The data presented here is for the "alone" population. In presenting data on race, the Census Bureau provides three conceptual groups. First, people who reported only one race (or subgroup) are referred to as the "alone" population. The alone population can be viewed as the minimum number of people reporting as that group. Second, individuals who chose more than one of the six race categories are referred to as the race in combination population. Third, the maximum number of people reporting Asian is reflected in the Asian "alone-or-in combination" population, which represents those who reported Asian alone and those who reported Asian in combination with one or more other races.

²⁶ Recent immigrants are those who entered the country in 2010 or later. The percentage is of the population that is born outside of the United States.

²⁷ Christina Isabelli, Yuling Pan & Stephen Lubkemann, III. Wesleyan Univ., *Observing Census Enumeration of Non-English Speaking Households in the 2010 Census: Spanish Report* (2012), <https://www.census.gov/srd/papers/pdf/rsm2012-06.pdf>.

The 30 Year Right Wing Campaign to Unconstitutionally Exclude Non-Citizens from the Reapportionment of the House of Representatives.

From the CRS opinion on the legality of excluding non-citizens from Reapportionment

https://www.everycrsreport.com/files/20120413_R41048_827f8eaf4c3b8b215bf77c25f31bbe75c59f066a.html

"From time to time, Congress has considered legislation that would exclude all aliens or only unauthorized aliens from being included in the census to apportion House seats among the states. Such legislation would have either amended the Census Clause of the Constitution or enacted or amended federal census statutes. In the 111th Congress, legislation has been introduced that uses both approaches. The Fairness in Representation Act would statutorily exclude aliens from the population count for apportionment purposes (H.R. 3797 and S. 1688). Under the above analysis, it would not appear to be constitutionally sufficient for Congress to amend the federal census statutes in such manner. Meanwhile, H.J.Res. 111 would take the other approach and amend the Constitution so that only U.S. citizens would be counted in the apportionment calculation."

A History of GOP Legislation to Tilt the Apportionment Count

Here is a link to details on H.R. 3797 by Rep. Virginia Foxx, (R- NC) and 22 GOP cosponsors, including Rep. Tom Cole, (R-OK) who had served as Chief of Staff of the RNC in 2000, and just finished serving as Chair the National Republican Congressional Committee, (NRCC) charged with running all GOP House campaigns. The Chair of the campaign arm of House Republicans has gotten behind this move in the past.

<https://www.congress.gov/bill/111th-congress/house-bill/3797/cosponsors>

Here is link to Rep. Foxx press release and at least her intent:

<https://foxx.house.gov/news/documentsingle.aspx?DocumentID=338301>

"By counting illegal immigrants the Census Bureau will be able to provide accurate data for the reapportionment and redistricting process. Without this data some states will receive fewer Congressional representatives than they should due to other states' high illegal immigrant population."

And this right-wing blog linking her bill to companion Senate actions:

<https://politicalvelcraft.org/2010/01/06/illegal-immigration-statistics-called-to-the-carpet-h-r-3797-will-prevent-socialists-reapportioning-distortions/>

Here is the Senate version introduced by Sen. Bennett of Utah, with 6 cosponsors, all GOP and from "beneficiary" states.

<https://www.congress.gov/bill/111th-congress/senate-bill/1688/cosponsors>

Rep. Steve King's current legislation:

<https://steveking.house.gov/media-center/press-releases/king-introduces-census-accuracy-act-of-2017>

Rep Davidson and others have introduced a new version of the Foxx bill:

<https://davidson.house.gov/media-center/press-releases/davidson-introduces-amendment-apportion-representation-citizen>

The driving force behind this cause since 2003 has been the right-wing Center for Immigration Studies. See here:

<https://cis.org/Impact-NonCitizens-Congressional-Apportionment>

As this NYTimes story lays out, Stephen Miller in the WH relies on the CIS for data to advance his immigration reform agenda.

https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html?_r=0

If you check out Steven A. Camorata, of CIS, you will see he is very supportive of Trump agenda, very high profile on this issue.

Or this story linking CIS to the Trump Administration:

<https://www.thedailybeast.com/trump-making-nativist-groups-wish-list-a-reality>

Here is their Executive Action wish list on their website. Of course, Apportionment is not on it, as CIS did not foresee how the Administration could achieve this aim without legislation:

<https://cis.org/Report/Pen-and-Phone>

Similarly, the Federation for American Immigration Reform (FAIR) has for years advocated excluding non-citizens for the Reapportionment AND for federal spending. A low-immigration activist group, sued over the 1980 and 1990 censuses to stop the inclusion of illegal aliens for the purposes of apportionment and lost both times for lack of standing.

<https://www.fairus.org/issue/illegal-immigration/congressional-seats-and-federal-outlays>

<https://www.nationalreview.com/corner/who-counts-mark-krikorian/>

<https://law.justia.com/cases/federal/district-courts/FSupp/486/564/1753930/>

<https://law.justia.com/cases/federal/district-courts/FSupp/715/1308/1764112/>



**Testimony of the Lawyers' Committee for Civil Rights Under Law
Submitted by Kristen Clarke, President and Executive Director**

**to the U.S. House of Representatives Judiciary Committee
Subcommittee on the Constitution and Civil Justice
Hearing on "Questions Regarding the U.S. Census"**

June 8, 2018

The national Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization established in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice for all, particularly in the areas of voting rights, economic justice, education, criminal justice, employment, and fair housing across our nation. The respect for the rule of law, the enforcement of our nation's civil rights laws, and the proper functioning of our democracy are of paramount importance to the Lawyers' Committee and the broader civil rights community. In fulfillment of this mission, the Census touches all of what we do. The apportionment of congressional, state, and local representatives and fair allocation of federal funding are central to our work and to the communities we serve. Working to address the undercount of African Americans, Latinos and other minority communities is an issue that we have contended with in recent census cycles. To that end, we filed federal litigation on April 17, 2018 to challenge this administration's unconstitutional and unlawful 11th hour decision to incorporate an untested and unnecessary citizenship question that will fully obstruct efforts to secure a fair and accurate census count in 2020.¹

As the Subcommittee on the Constitution and Civil Justice of the Judiciary Committee of the House of Representatives considers "Questions Regarding the U.S. Census," two centuries of consistent interpretation already provide the clear answer to the foundational question of who should be counted in the Census: everyone counts. Since 1790, every census has counted all people in the United States, regardless of their immigration status. The constitutional mandate to count "the whole number of persons in each state," has a long and settled tradition of including all persons, regardless of their citizenship or immigration status. (The only exceptions are foreign tourists and diplomatic personnel living on embassy grounds.) This has been the practice since the very first census and any current disruptive efforts will ignore the Constitution's plain language and clear intent, disrupt the integrity of the Census, and undermine participation in the Census. As history, practice, and precedent demonstrate, the duty of the Census is to be inclusive and accurate. As it was in past Census counts, it is the responsibility today of the U.S. Census Bureau, the Secretary of Commerce, and Congress to maintain and ensure the legitimacy, accuracy, and integrity of the 2020 Census.

¹ Complaint, *City of San Jose v. Ross*, No. 5:18-cv-2279 (N.D. Cal. April 17, 2018)

regarding race and ethnicity on the 2020 questionnaire.⁴ Efforts to modify the Census enumeration or survey process at this late date, without appropriate research and testing, will jeopardize the accuracy and integrity of the Census.

The data collected by the Census are used in every facet of our nation's political, social, and economic decision making. As such, it is essential that all participate fully in the Census in order that decisions made in all aspects of private and public decision making are based on fully informed data. The U.S. Census Bureau for years has confronted the problem that African Americans, Latinos and other minority communities have historically been undercounted during each decennial census. Adding untested and unneeded questions will exacerbate this long-standing problem. In discussing the addition of a citizenship status question to the Census, a bipartisan coalition of at least four former Bureau directors shared the view that inquiring about citizenship status on the Census questionnaire "would likely exacerbate privacy concerns and lead to inaccurate responses from non-citizens worried about a government record of their immigration status." Brief of Former Directors of the U.S. Census Bureau as Amici Curiae in Support of Appellees at 23, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (No. 14-940), 2015 WL 5675832, at *23. The changes to the Census being discussed during this hearing are likely to undermine robust participation and dismantle substantial efforts made to increase participation. "The sum effect would be bad Census data." *Id.* at *25. Inaccurate and incomplete data directly interferes with the Bureau's fulfillment of its constitutional responsibility.

Furthermore, the ostensible reason for adding a citizenship question is baseless. The decision to do so, results from a letter sent by the General Counsel of the Justice and Management Division of the Department of Justice on December 12, 2017, at the tail end of census testing and preparation. The DOJ stated that it needed data as to the number of citizens of voting age population (CVAP) at the census block level in order to effectively enforce Section 2 of the Voting Rights Act in vote dilution suits — suits brought to ensure that election districts are drawn in a way that gives minority voters an equal opportunity to elect candidates of their choice.

The justification provided by DOJ simply does not withstand scrutiny and is clear pretext for a decision that will undoubtedly jeopardize efforts to secure a full and accurate count. The facts are that:

- This Administration's Department of Justice has demonstrated hostility to enforcement of the Voting Rights Act and has shown no commitment to safeguarding the rights of minority voters;
- Past administrations have had no trouble filing suits to enforce Section 2 without needing data on citizenship from the Census short-form questionnaire; and
- Since 2005, the American Community Survey, administered by the Census Bureau, but not as part of the Census itself, has provided sufficient data as to CVAP to allow both private plaintiffs like the Lawyers' Committee for Civil Rights Under Law and our sister organizations and DOJ to prosecute Section 2 claims successfully.

⁴ U.S. Census Bureau, Research to Improve Data on Race and Ethnicity (2016), <https://www.census.gov/about/our-research/race-ethnicity.html>.



Response to the allegation that the absence of a citizenship status question on the decennial Census will cause dilution of African American vote.

The decennial Census count is not a zero-sum game. For the purposes of apportionment, it is critical that everyone be counted in the decennial Census regardless of citizenship status.

There is a long history of the Census not counting vulnerable communities completely, particularly communities of color, a history that we should not be working to replicate. Indeed, given that the African American community for far too long was not counted as whole persons under the law, African American communities are adamant about accounting for everyone in the apportionment and redistricting processes.

The Fourteenth Amendment to the U.S. Constitution states: “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.” More than 50 years ago, the U.S. Supreme Court held that the Equal Protection Clause requires that legislative districts be equal in population (*Reynolds v. Sims* 1964).

For a half-century in an unbroken line of cases, the “one person, one vote” rule has helped realize the constitutional promise of inclusion and equal access to our nation’s representative bodies. This bedrock principle guards against discrimination in many of its forms and ensures that everyone is counted when legislative districts are redrawn.

Creating legislative districts with equal total populations fosters access to electoral representation and constituent services regardless of race, class, religion, citizenship status, or other characteristics. Courts have repeatedly approved of dividing districts by total population. Groups like the NAACP Legal Defense & Educational Fund, the Lawyers’ Committee for Civil Rights Under Law, the ACLU, and many others who advocate on behalf of Black communities have vigorously pressed for the use of the total population count for apportionment purposes when the U.S. Supreme recently took up this question of who should count in apportionment (*Evenwel v. Abbott*, 2015).

Using total population allows everyone -- including children who are not old enough to vote, individuals who are not yet registered to vote, people on the path to citizenship, people rendered ineligible to vote by felony disenfranchisement laws, people with mental disabilities, and others -- to be represented in state and local legislative bodies.

Focusing on how the citizenship status question may impact the African American Census count is an incorrect and misleading focus. It is much more important to focus on the fact that